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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

B&G FOODS NORTH AMERICA, INC.,

Plaintiff,

v.

KIM EMBRY and ENVIRONMENTAL
HEALTH ADVOCATES, INC., acting as
enforcement representatives under California
Proposition 65 on behalf of the State of
California,

Defendants.

Case No. 2:20-cv-00526-KJM-DB

**B&G FOODS NORTH AMERICA,
INC.'S OPPOSITION TO
DEFENDANTS KIM EMBRY AND
ENVIRONMENTAL HEALTH
ADVOCATES, INC.'S MOTION FOR
ADMINISTRATIVE RELIEF FOR AN
ORDER PERMITTING LEAVE TO
FILE MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT EXCEEDING 20 PAGES**

Judge: Hon. Kimberly J. Mueller
Courtroom: 3

SAC Filed: November 23, 2022
Trial Date: None Set

OPPOSITION

Defendants' motion to exceed the page limit on their motion for summary judgment should be denied. They have not proven any type of exceptional circumstance that would justify consuming judicial and party resources in this manner. To the contrary, this case is relatively simple—it arises from Defendants filing sham Prop 65 acrylamide lawsuits in which they intentionally spoliated evidence, doctored the samples they submitted to labs, and made allegations knowing that they had no chance of success. Defendants' request to exceed the page limit is especially unwarranted because they are moving for summary judgment while at the same time withholding critical evidence in violation of their discovery obligations. The existing discovery issues need to be decided before Defendants could ever seek such relief.

As the Court explained in its Standing Orders, “[o]nly in rare instances and for good cause will the court grant an application to extend page limitations.” (Dkt. 3-1 at 3.) Defendants do not explain why they need to file a longer brief than a defendant in an antitrust case, a patent case or a CERCLA case, for example. Nor have Defendants identified any complex legal issues or substantial factual developments that would warrant an extended brief. They have already filed numerous motions, including iterative motions to dismiss, which the Court denied. They have ample room to present whatever remaining theories they think would somehow extenuate their conduct within the standard page limit.

Accordingly, Defendants' request for an enlarged brief should be denied.

Dated: July 8, 2024

Respectfully Submitted,

BRAUNHAGEY & BORDEN LLP

By: 
Matthew Borden

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